

MEMORANDUM OF AGREEMENT
CONCERNING LAW ENFORCEMENT SERVICE
FOR THE CROW INDIAN RESERVATION

This Memorandum of Agreement ("Agreement") with respect to Law Enforcement Services for the Crow Indian Reservation is entered into as of September 30, 2010 by and between the Crow Tribe of Montana (the "Crow Tribe" or "Tribes"), Crow Agency, and the Bureau of Indian Affairs (the "Bureau" or "BIA") Office of Justice Services ("OJS") under the authority of the Indian Law Enforcement Reform Act, 25, USC § 2804 (e) pursuant to the following recitals and agreements.

Recitals

WHEREAS, the Crow Tribe of Montana is a federally recognized Indian tribe that maintains a government-to-government relationship with the United States, said relationship being grounded on Federal treaties and statutes; and

WHEREAS, the United States has an obligation, secured by federal treaty, to protect the Tribe and its territory from criminals; and

WHEREAS, the Federal Government has an interest in promoting strong tribal governments with the ability to protect the health and welfare of their members (69 FR 6321-01); and

WHEREAS, the Crow Tribe of Montana exercises powers of self-government, which have never been extinguished, which include the authority to protect the health, safety and welfare of its tribal members and all other persons who come within the Tribe's jurisdiction; and

WHEREAS, the Federal Government has a legal, treaty and trust responsibility to prevent crime in Indian country; and

WHEREAS, under the Indian Law Enforcement Reform Act, 25 USC § 2801-2809, and the corresponding regulations at 25 CFR part 12, the Secretary of the Interior, acting through BIA, is charged with providing, or assisting in the provision of law enforcement in Indian Country (69 FR 6321-01); and

WHEREAS, the BIA, U.S. Department of the Interior, currently administers the law enforcement functions for the Crow Indian Reservation and may continue to do so until such time as the Crow Tribe affirmatively elects to administer these program functions in accordance with provisions of the Indian Self-Determination and education Assistance Act of 1975 (P.L. 93-638) as amended; and

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WHEREAS, the Crow Tribe, recognizing the need for increased uniformed patrol officers within the districts of the reservation, Crow Agency (and other dispatch locations) has in recent years appropriated scarce tribal funds to supplement, but not to Replace, Tribe/Agency TPA-39000 federal funds allocated for the Office of Justice Services; and

WHEREAS, the parties wish to continue this arrangement for purposes of training tribal members in law enforcement careers and to work in partnership to provide professional law enforcement for members of the Crow Tribe, other eligible Indians, residents and visitors within the exterior boundaries of the Crow Indian Reservation, and for the purpose of effecting liability coverage for Crow Tribal employees assigned to work with the BIA Office of Justice Service; and

WHEREAS, the Crow Tribe receives funding for various programs which complement and enhance law enforcement efforts on the Crow Reservation and coordination of the administration and implementation of these programs with BIA Law Enforcement Services will minimize duplication and maximize services for the Crow Tribe; and

Agreements

1. As the primary criminal law enforcement authority on the Crow Reservation until such time as the Crow Tribe takes on that duty, BIA Office of Justice Services shall work diligently to prevent and assist with the prosecution of crime on the Crow Reservation and to enhance public safety to the best of its abilities. This obligation includes responding and policing actively throughout the Crow Reservation.
2. The Crow Tribe and BIA Office of Justice Services agree that the Crow Tribe may supply tribal police officers, at its discretion, to the BIA Law Enforcement Program on the Crow Reservation, with salaries paid by the Crow Tribe, to serve under the supervision of the BIA Chief of Police for the Crow Reservation.
3. The following guidelines and authorities will apply to this agreement: Title 25, Code of Federal Regulations (CFR) Part 12, (1996 ed.), Subparts 12.11 through 12.63, 12.200, 12.102-12, 12.105; 68 BIAM; Departmental Manual 446; 43 DFR Part 2 – Records and Testimony, Subpart D – Privacy Act, Subparts 2.45 through 2.79, and Subpart # - Compulsory Process and Testimony of Employees, Subparts 2.80 and 2.82 (Touchy Regulations) (1996 ed.0; Title 25 U.S.C. § 2803, 2804 (sections 4 and 5 of the Act of August 18, 1990, Pub. L. 101-379, 104 Stat. 476), the Indian Law Enforcement Reform Act, as well as Sections 3202-3205, 3210(c), Pub. L. 101-630, Title IV (104 Stat. 4545-4551), the Indian Child Protection and Family Violence Prevention Act of November 28, 1990; Pub. L. 101-647, Crime Control Act of 1990, Child Care, Worker Employee Background Checks, and Lautenberg Amendment (pertaining to the prohibition against possession or use of weapons based upon investigation or conviction of domestic abuse) as

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supplemented by policies issued by the BIA, BIA Superintendent, Crow Indian Agency, necessary to provide effective law enforcement services for the members of the Crow Tribe of Montana and other eligible Indians. While operating within the scope of their employment the Federal Tort Claims Act, 28 U.S.C. § 2671-2680, as discussed below, and Federal Employees Compensation Act, 5 U.S.C. § 8191, may also be applicable to the extent permitted by law.

4. All personnel employed as police officers, whether BIA employees or employees of the Crow Tribe assigned to work at the Bureau's Law Enforcement Program, shall complete minimum training requirements at approved training courses recognized by the BIA, Office of Justice Services. In accordance with Federal requirements outlined in 25 CFR § 12.35 no law enforcement officer shall perform law enforcement duties until they have successfully completed a basic law enforcement training course prescribed by the BIA-OJS Deputy Bureau Director. All officers shall complete required training courses annually as prescribed in the BIA-OJS Law Enforcement Handbook. The BIA Chief of Police shall inform employees of the Crow Tribe of training opportunities and provide applications for such training. Training will be coordinated by the Chief of Police.
5. All Crow tribal employees associated with the BIA-OJS shall meet all background and criminal history reporting requirements mandated by 25 CFR subpart § 12.32, Public Law 101-630 and Public Law 101-647, as described above. All law enforcement personnel must successfully complete a thorough background investigation no less stringent than required of a federal officer performing the same duties. The background investigation must be adjudicated by trained and qualified security personnel. All background investigations must be documented and available for inspection by the BIA- OJS. These requirements include, but are not limited to, no felony convictions, no domestic abuse convictions, and no misdemeanor offenses within one year of the date of the background check. The background check will include an NCIC search, a local Tribal Court records search, reference check, financial records check, employment record check, fingerprint card forwarded to the FBI and any other record check required to complete the background investigation. The BIA assumes the responsibility for providing background check packets to tribal law enforcement personnel; processing NCIC background search and forwarding fingerprint cards to the FBI. All backgrounds must be adjudicated before an employee is allowed to work in a law enforcement position unless a waiver is obtained through the BIA-OJS.
6. Should derogatory information surface during a subsequent background investigation, the employee shall be immediately removed from BIA-OJS and assigned elsewhere or be terminated, as may be appropriate. The Crow Tribe will assume any costs associated with background checks for tribal employees.

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7. Designated law enforcement work under this agreement shall be directed by the BIA Office of Justice Services Program Director that is the Supervisory Police Officer, designee or Chief of Police. The Crow Tribe agrees and understands that the Crow Law Enforcement Department will have only one Supervisor, the BIA Chief of Police. The Crow Tribe agrees that tribal police officers will be under the supervision and review of the BIA Chief of Police and will report and respond through established BIA-OJS chain of command.
8. While acting within the scope of their employment and authority under this Agreement, employees of the Crow Tribe shall be covered by the Federal Tort Claims Act and the Federal Employees Compensation Act to the extent allowable and permitted by law. The Crow Tribe, through its official representatives, and its employees, agree to cooperate fully with the Billings Field Solicitor (Rocky Mountain Region), and the Rocky Mountain Regional Office, BIA, and Crow Indian Agency in the investigation and documentation for claims arising from the performance of duties covered under this Memorandum of Agreement, including but not limited to:
 - a. Provide a certification of employment and a statement certifying whether the employee is acting within the scope of work covered by this Memorandum of Agreement. This statement provided in response to this subsection should include:
 - i. The name and title or position of the involved employee(s); and
 - ii. A brief description of the employee(s) duties and/or a copy of the individuals' job description; and
 - iii. A narrative description of the incident giving rise to the claim(s), including the time, date and place of the incident; and
 - iv. If an automobile was involved, a certification that the driver had permission and authority to drive the U.S. Government-owned or leased vehicle, and identity of the official who gave the permission by name and position title, and scope of permitted use; and
 - v. Identify the individual making the certification pursuant to this subsection by name and title or position.
 - b. Advise whether or not the Crow Tribal employee(s) carries liability insurance that covers the type of claim(s) involved and, if so, include a copy of the policy, showing the name of the insurer and their address.
 - c. Provide copies of all police reports, statements from the involved employee(s) (and witness, if any) which includes the names, titles or

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positions, and telephone numbers of all person(s) familiar with the incident giving rise to the claim(s).

- d. Designate the Crow Tribe Public Safety Officer or other appropriate Crow Tribal employee as the "Tort Claim Officer" for the purposes of this Memorandum of Agreement, who shall be responsible for ensuring that the above described information is obtained by the BIA and the Billings Field Solicitor regarding any claim(s) arising from activities covered by this Agreement.
 - e. Promptly notify the collateral safety officer at the Crow Agency of any incident which involved Crow Tribal police services personnel, acting in furtherance of this Agreement, that may have resulted in a death, actual or potentially serious personal injury, or substantial property damage (estimated to be in excess of \$5,000), ensure that tribal employees are made available to testify or otherwise assist the United States in defending against any claim(s) arising from activities covered by this Agreement.
9. Under this Agreement, the Crow Tribal police officers who meet all basic requirements, including completion and certification of a favorable background check/criminal history check and completion of required training, shall have the authority to arrest, stop and search, confiscate, serve citations, transport prisoners and involuntary mental health detainees, prevent and investigate violations of the Crow Tribal Law and Order Code, assist in accidents and emergencies, bear and transport messages where necessary for the peace and welfare of the Tribe, preserve law and order, and serve as an officer of the tribal court. BIA police officers are authorized and obligated to enforce tribal law pursuant to Crow Tribal Resolution Number 91-12, and to carry out the authorities outlined in 25 U.S.C. § 2803.
10. As authorized in the Federal Acquisition Regulations, Part 45, Government Property, the BIA Branch of Justice Services will authorize tribal personnel under the supervision of BIA Crow Law Enforcement Department Chief of Police to use necessary U.S. Government equipment such as pistols, rifles, electronic devices, batons, vehicles, ASP, pepper mace, police radios, keys and other assigned equipment defined in manuals approved for use by the BIA, provided that such tribal personnel are instructed and certified in the proper use, maintenance, and custody of assigned government property.
11. The Crow Tribe shall provide insurance for its employees who are assigned to work under the supervision of the BIA Crow Law Enforcement Department. If the Tribe's employee(s) use U.S. Government-owned or leased police or other vehicles, the Tribe shall provide insurance in the amount of \$50,000 for uninsured motorists in the actual cash value or cost of repair or replacement, whichever is less (minus the deductible) for each covered vehicle. The insurance policy

obtained by the Tribe shall name the United States Bureau of Indian Affairs as the insured. The insurance covers the tribal police officers or other tribal employees under the supervision of the BIA Crow Law Enforcement Department when they are operating vehicles owned by the U.S. Government.

12. Officers of the Crow Law Enforcement Department – both BIA and Tribal – shall make all reasonable efforts to timely appear in Crow Tribal Court as requested by the Crow Tribal Prosecutor and shall respond to orders of the Crow Tribal Court, to the extent allowable under federal law.
13. Officers of the Crow Law Enforcement Department - both BIA and Tribal – shall enforce the laws of the Crow Tribe to the extent allowable under federal law, as well as all applicable federal criminal laws. BIA police officers are authorized to enforce tribal law pursuant to Crow Tribal Resolution Number 91-12, and carry out the authorities outlined in 25 U.S.C. § 2803.
14. The BIA Chief of Police shall provide quarterly reports to the chairman of the Crow Tribe Executive Branch and/or his/her designee and respond to reasonable requests for information, which is not prohibited from disclosure by tribal or federal law.
15. Supervision of all tribal personnel employed under or assigned to BIA Law Enforcement shall be assigned to the BIA Law Enforcement Department under the administration of the of the BIA Chief of Police.
16. Nothing in this Agreement affects the BIA's right to deputize members of other agencies – tribal and/or non-tribal – to assist in its efforts to protect public safety and enforce applicable laws on the Crow Reservation.
17. Reports and documents generated by Crow Tribal Law Enforcement personnel in connection with official law enforcement duties are the exclusive property of the BIA-OJS and are to be maintained in accordance with BIA-OJS administrative standard policy and procedures. Reports and documents shall be generated in a timely manner and shall be made available to the Crow Tribe, its members, and other residents of the Crow Reservation, for prosecutorial, investigative, insurance-related, and all other reasonable purposes to the extent that disclosure of such information is not prohibited from disclosure by tribal or federal law.
18. Salary and fringe benefits for tribal employees, such as life or health insurance benefits and retirement pensions, are discretionary and if available are provided at the sole expense of the Crow Tribe.
19. BIA and Tribal law enforcement personnel, as well as other tribal program personnel, shall strictly maintain confidentiality of all ongoing police investigations to insure the integrity and success of such investigations. Should

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substantiated information surface that a tribal law enforcement employee has divulged investigative information, which jeopardized an ongoing investigation; the tribal employee shall be terminated from his/her law enforcement position and reassigned.

20. Either party involved in this Agreement may suspend, terminate or revoke this Agreement upon thirty (30) days written notice to the other sent by registered, certified or first class mail. This Agreement shall not be amended except by an instrument in writing executed by the parties to this Agreement, said executed Agreement to be attached to this Agreement and incorporated herein by reference. Any notice required or permitted to be given under this Agreement shall be deemed sufficient if given in writing and sent by registered, certified or first class mail.
21. The provisions of this Agreement are severable and should any provision be held invalid or unenforceable, the remainder of this Agreement is to remain in effect, unless terminated as provided in this Agreement.
22. Nothing in this Agreement shall be construed to cede any jurisdiction, to waive any immunities, to modify the legal rights of any person, to accomplish any act of violation of federal, state or tribal law so as to subject the parties, jointly or severally, to any liability to which they would not otherwise be subject absent this Agreement. In particular, nothing in this Agreement waives the sovereign immunity of the Tribe.
23. Nothing in this agreement waives or diminishes the Tribe's ability and responsibility to protect the health, welfare, and safety of its members or the integrity of its lands and resources.
24. This Agreement shall be in effect immediately upon signature of the parties and for a term not to extend beyond September 30, 2013, and represents all understandings, agreements and proposed modifications of the pre-existing agreements which are superseded, rescinded, voided, canceled and revoked upon approval of the parties/signatories to this Memorandum of Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and witnessed in their names by the proper officials thereof who are duly authorized on the effective date herein above set forth.

Witnesses:

Crow Tribe of Montana

By: Cedric [Signature]

Bureau of Indian Affairs
Office of Justice Services
District V

By: Matthew Ryan
District V Special Agent in Charge